

Karl P Fagans
104 Connecticut Drive,
Chocowinity, NC 27818
Telephone: 252-940-4608

FILED
CLERK'S OFFICE
JUL 10 - 9 12 43b
U.S. DISTRICT COURT
DISTRICT OF MASS.

Civil Clerk
United States District court
John Jose ph Moakley Courthouse
1 Courthouse Way
Boston, Ma 02210

RE: US Trust Company N.A. v Karl P. Fagans et al, Civil
Action No. 05-10013 (REK)

Dear Sir/Madam:

I sincerely apologize for my lack of action on this matter. I was awaiting an answer from an Attorney and I did not understand what actions were required of me to retain his services. So, no action was taken, hence I do not have representation.

Thus, I respectfully request that the Court grant me the ability to answer as mentioned in the Waiver of Service Summons. An answer was due before April 26, 2005, and I am late.

Please let me know what I should do. I do not have the funds to pay an attorney a \$5,000 retainer as well as a billing rate of \$275 per hour, and I would like respond properly.

I don't know the form of the answer. Here are the facts, as I understand them as well as copies of documents from my records.

I left Arthur D. Little Inc. (ADL) in 1999 after 27 years of service. ADL filed for bankruptcy in 2002.

When I left/terminated my relationship with ADL in mid 1999, my Memorial Drive Trust (MDT) Account was over \$650,000.

In May of 2000 I request a partial "Rollover Distribution" as well as semi-annual periodic payments of \$25,000 until my account was depleted. Please see the enclosed "Payment and direct Rollover Instructions - which I marked "A" and the copy of the Request for Distribution as of July 1, 2000 - which I have marked "B".

Civil clerk, US District Court

Pg 2

Aug 23, 2005

In July (I believe) of 2002 I received a letter from Mr. Alan L. Miller of US Trust requesting that I send \$18,434.32 of "excess distribution". I responded October 21, 2002 (see the enclosed marked "C"). Since, I had filed instructions (see above "A" and "B") and my account was fairly sizeable upon my termination of employment, I did not agree that there was an excess distribution. I was also concerned given the changes at ADL, such as the bankruptcy filing and the change in the Trustee of the MDT

I wrote to US Trust again November 25, 2002 (see enclosed marked "D") requesting a reply to my letter of October 21, 2002, and received no response.

In May of 2004 I received a letter from Mr. Malcolm Hindin, of Palmer & Dodge, requesting \$18,434.32 to cover the excess distribution.

On May 7 2004 I wrote Mr. Hindin asking when the requests addressed to US TRUST would be answered. (Enclosed marked "F")

There were additional exchanges between me and my attorney at the time, Mr. Paul Alphen, of Westford, MA., and Mr. Hindin, including the enclosure marked "G" dated May 30, 2004.

To date, I have received part of the information requested in my October 2002 letter. Your advice as to how I should proceed would be most welcome.

Sincerely,

Karl P. Fagans

Enclosures

CC Ms. Cintra S. Shober, Hardcastle & Shober, Attorneys for US Trust.

(A)

MDT Retirement Plan (MDT)**Payment and Direct Rollover Instructions***Partial Lump Sum & Lump Sum Distribution(s) Eligible to be Rolled Over*

Print Name: KARL FAGANS	Home Address: MATTHEW ADDRESS P.O. BOX 2070
Social Security Number: 099-34-9359	VINZVARD HAVEN MA 02568
Daytime Phone No./Ext.: (781) 209-1057	Country of Citizenship: USA

Complete Section A to indicate your payment instructions. If you elect a direct rollover of all or part of your distribution, you must also complete Section B.

Enclosed is a "Special Tax Notice Regarding Payments from the MDT Retirement Plan" that explains the rollover, withholding, and tax rules. You have at least 30 days to consider the rollover options and tax implications of your distribution; read it carefully before making your election. If you sign this form less than 30 days before receiving your distribution, you waive the 30-day requirement, unless you indicate otherwise in writing. You may want to consult your professional tax advisor before deciding which course to follow.

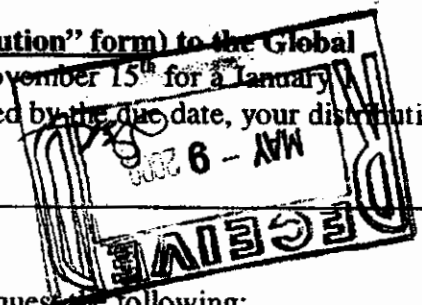
Return this completed form (along with your "Request for Distribution" form) to the Global Benefits Office at least 46 days prior to your payment date (i.e., November 15th for a January payment or May 15th for a July 1 payment). If your form is not received by the due date, your distribution will be delayed until your instructions are received and processed.

Section A. Payment Instructions

For the portion of my distribution that is eligible to be rolled over, I request the following:

- ☒ **Paid directly** to me by check with 20% withheld for federal taxes and with mandated state tax withholding, if any.
- ☐ **Directly rolled** over into the Individual Retirement Account (IRA) or the qualified plan named on the reverse side of this form.
- ☐ Amount \$ _____ (in whole dollars) **directly rolled over** into the IRA or the qualified plan named on the reversed side of this form, **and the remainder paid to me** by check with 20% withheld for federal taxes and with mandated state tax withholding, if any.

I understand that these instructions are only effective for the lump sum distribution that I am requesting at this time (including any portion paid as the result of a later distribution of any amount not yet determined as of the first distribution.).



In addition to federal requirements, certain states also mandate state withholdings from distributions. These states are California, Delaware, Georgia, Iowa, Kansas, Louisiana, Maine, Massachusetts, Oklahoma, Oregon, Vermont, and Virginia. If your residence state is different than your check mailing address, provide your withholding state below:

Residence State for tax withholding:



Section B. Direct Rollover Information:

Please complete this section if you elected a direct rollover in Section A. (*The MDT allows a direct rollover into only one IRA or plan for each distribution you receive.*) Roll over my distribution to:

☐ An Individual Retirement Account (IRA)

Name of IRA Trustee _____
(i.e., the way in which the check should be made payable to – bank, financial institution, etc.)

Fund Name (if required by IRA Trustee): _____

IRA Number (if known): _____

☐ Another company's plan, provided it accepts rollovers (before completing this section, inform your company's plan administrator that the distribution is from a qualified plan under Section 401(a) of the IRS code.

Name of Company: _____

Name of Plan: _____

NOTE: You will receive a check made payable to the Trustee of the IRA or to the plan that you have specified. You must deliver this check to the Trustee as soon as you receive it. By signing this form, you represent that the recipient of the rollover check is either an IRA or a tax-qualified retirement or profit sharing plan that accepts a check as a rollover.

Member's Signature: _____

Date: _____

9 MAY 2006

Return form to: Arthur D. Little, Inc.
Global Benefits Office
Acorn Park, 25/312

C. Lump-sum Payment

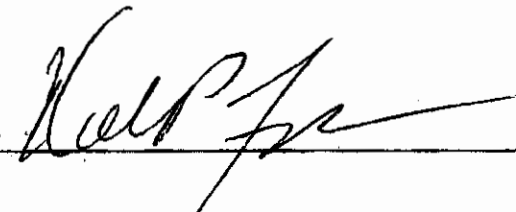
- ☐ Receive a 100% distribution of my account as of **July 1, 2000**.
(NOTE: The actual value of your account will not be available until the processing of the plan results is completed. This is expected to be finalized 3 to 4 months after the December 31 or June 30 valuation date. In the meanwhile, you will receive an initial distribution representing a major portion of your account as of the previous December 31 or June 30 valuation. Once the valuation processing is completed, you will receive a second distribution representing the balance of your December 31 or June 30 account. *Any amount received after December 31 and/or June 30, including the second distribution, will not participate in any gains or losses of the MDT Retirement Plan after December 31 and/or June 30.*)

D. Purchase of an Annuity

- ☐ Purchase an annuity with \$ _____ of my MDT Retirement Plan account as of **July 1, 2000**. *Contact the Global Benefits office at 1-800-677-3000, extension 5290, or 617-498-5290 for detailed information regarding your requested annuity purchase.*

You have at least 30 days to consider your distribution option(s) after receiving this form and information on the options. *If you sign this form less than 30 days before your distribution is issued, you are waiving the 30-day requirement, unless you indicate otherwise.*

Signature of Member



Date Signed

9 MAY 2000

The Global Benefits office will return a copy of this form to you to confirm receipt.

Please return form to: Arthur D. Little, Inc.
Global Benefits Office
Acorn Park, 25/312
Cambridge, MA 02140-2390

(A-14)

MDT RETIREMENT PLAN

FEDERAL AND STATE INCOME TAX WITHHOLDING ELECTION FORM
(FOR PERIODIC PAYMENTS AND/OR MINIMUM DISTRIBUTIONS
THAT ARE NOT ELIGIBLE TO BE ROLLED OVER)

Print Name: Karl Fagan

Home Address:

P.O. Box 2070
 20 WOODCHAP CIRCLE
 VINEYARD HAVEN, MA
 02568

Soc. Sec. No. 099-34-9359

Daytime Phone No./Ext.: (781) 204-1057
 or (508) 693-8736

All or part of the periodic payment(s) you receive from the MDT Retirement Plan will have federal income taxes withheld unless you elect not to have taxes withheld.

In addition to federal requirements, there are certain states that also mandate state withholding when distributions have federal taxes withheld. These states are California, Delaware, Georgia, Iowa, Kansas, Louisiana, Maine, Massachusetts, Oklahoma, Oregon, Vermont, and Virginia. Your state tax withholding will be based on your check mailing address. If your residence state is different than your check mailing address, please provide this withholding state below.

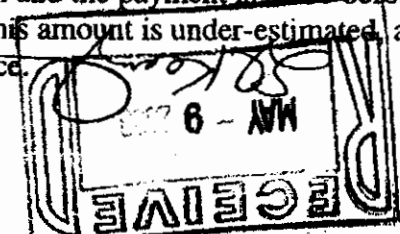
My residence state for tax withholding is: MASS.

My citizenship is: U.S. X Other _____
 (please specify)

If this form is not properly completed and/or returned to the Global Benefits office, your tax withholding will be based on the assumption that you are married and are claiming three (3) withholding exemptions. If you elect not to have withholding apply to this payment, or if you do not have enough federal income tax withheld from your payments, you may be responsible for payment of estimated tax. You may incur penalties under the estimated tax rules if your withholding and estimated tax payments are not sufficient.

Attached to this election form is a "Special Tax Notice Regarding Payments from the MDT Retirement Plan" which explains the new rollover, withholding, and tax rules. Read it carefully before making your election. You may also want to consult a professional tax advisor before deciding which course to follow.

If through this payment you are receiving a minimum required distribution and the payment is made before the actual minimum amount can be determined, an estimate will be used. If this amount is under-estimated, an additional payment may subsequently be required to make up the difference.



--See Reverse Side--

ELECTION

Complete sections 1 or 2 below if you **WANT** federal and mandatory state income tax(*) withheld from your semi-annual periodic payments.

1. ✓ I want to have federal tax determined by IRS tax tables using the following number of exemptions and marital status.

☐ single ☒ married ☐ married but withhold at higher single rate

Number of exemptions: 2

✓ I want to have state tax determined by state revenue department tax tables using the following number of exemptions and marital status.

☐ single ☒ married ☐ married but withhold at higher single rate

Number of exemptions: 2

2. _____ I want to have a fixed dollar amount of \$ _____ withheld for federal tax.
(in whole dollars)

_____ I want to have a fixed dollar amount of \$ _____ withheld for state tax.
(in whole dollars)

Please complete this section below if you **DO NOT WANT** federal or state tax(*) withheld from your periodic payments and/or minimum required distribution that cannot be rolled over.

_____ I do not want to have federal tax withheld.

_____ I do not want to have state tax(*) withheld.

*I understand that if I reside in a state that requires mandatory withholdings, such withholdings will be deducted based on applicable state tax laws.

Signature of Member

Date

Return form to:

Arthur D. Little, Inc.
Global Benefits Office
Acorn Park, 25/312
Cambridge, MA 02140-2390

(B)

REQUEST FOR DISTRIBUTION AS OF JULY 1, 2000

Print Name: KARL P. FAGINS	Social Security Number: 099-34-9359
Home Address: P.O. Box 2070 20 WOODHILL CIRCLE VINEYARD HAVEN MA 02568	Employee Number: Date of Birth: 26 SEPT 1942 Daytime Phone No./Ext.: (781) 209-1057

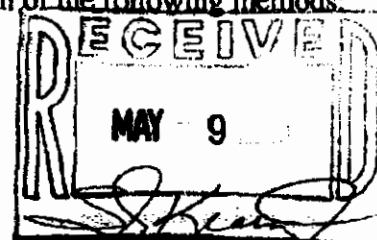
You, or your beneficiary, become entitled to a distribution of your MDT Retirement Plan account when any one of the following occurs:

- you reach the normal retirement age of 65, whether or not you are an employee of Arthur D. Little, Inc.;
- you reach age 55 and you are no longer an employee of Arthur D. Little, Inc.;
- you become permanently disabled; or
- you die.

You may defer receiving your account, but generally no later than the year in which you reach age 70 1/2.

You may elect to have your account distributed in any one or a combination of the following methods:

- semi-annual periodic payments
- partial lump sum payment
- 100% lump sum payment
- purchase of an annuity



Please refer to the "MDT Retirement Plan Payment Options" for additional information on these methods of payment.

Rollover and Tax Withholding Information

Most lump-sum distributions and certain periodic payments from the MDT may be rolled over, tax deferred, into an Individual Retirement Account (IRA) or another company's qualified plan (provided that plan accepts rollovers). However, certain payments from the MDT cannot be rolled over (e.g., periodic payments that will last for 10 years or more, annual minimum required distributions that generally begin after age 70 1/2, and after-tax contributions). In addition, any amount paid to a non-spousal beneficiary is not eligible to be rolled over.

You can elect to roll over directly into an IRA or another company's plan all or part of your distribution from the MDT that is eligible for rollover treatment. No taxes will be withheld from the amount that you directly roll over. However, federal taxes must be withheld at the rate of 20% on any portion of the distribution that is eligible for rollover, but which is paid to you instead. In addition, some states require that state taxes be withheld. If you receive a taxable payment that cannot be rolled over, you may elect whether or not to have taxes withheld from that payment.

See Reverse Side →



Distributions from the plan are made twice a year (i.e., as of January 1 and July 1). To request a distribution, you must complete and submit a "Request for Distribution" form between April 1 and June 30 for a July payment, or between October 1 and December 31 for a January payment. *However, to receive a timely distribution, your request must be received by the Global Benefits office no later than May 15 for a July 1 payment, or by November 15 for a January 1 payment. If your request is submitted after May 15 or November 15, please keep in mind that your payment will be delayed. If your payment is delayed, it will not participate in any gains or losses after the June 30th and/or December 31st valuation. In addition, any request submitted between May 15 and June 30 will result in a late payment in July. Payment request submitted between November 15 and December 31 will result in a late payment in January.*

Enclosed is the appropriate tax withholding and rollover forms for completion. These forms must also be returned to the Global Benefits office on the dates indicated above.

Note: Before making any payment decision, it may be helpful to seek your own counsel from a financial advisor, accountant, or attorney.

DISTRIBUTION ELECTION

Distribution Election - Check all boxes that apply and complete requested information on your election. Box A, B, C or D may be elected or any combination thereof. *[Note: Distributions will be deducted proportionately from the members' accounts with values in both Former Employees' Balanced Growth Funds (BGF 2/3)]*

I would like to request for the following distribution(s) from my MDT Retirement Plan account:

A. Semi-annual Periodic Payments

- ☒ Commence semi-annual periodic payments of \$ 25,000 as of July 1, 2000 and payable as of each January 1 and July 1 thereafter until my account is depleted or I give written instructions to the contrary. (When one of your funds to which you have elected is depleted, your payments will be deducted from your other fund.)

\$ 25,000 deduct from the Balanced Growth Fund(s)

\$ _____ deduct from the Capital Conservation Fund

B. Partial Lump-sum Distribution (This can be a one-time payment in addition to your semi-annual periodic payment or as a stand-alone payment.)

- ☒ Receive a one-time partial lump-sum payment of \$ 25,000 as of July 1, 2000.

\$ 25,000 deduct from the Balanced Growth Fund(s)

\$ _____ deduct from the Capital Conservation Fund

Karl P. Fagans
104 Connecticut D
Chocowinity, NC 2
 Tel: 252.940.4608
 e-mail: karl@fagans.com

7049 3400 0015 8592 306

Postage	\$ 3.7	Postmark None
Certified Fee	230	
Return Receipt Fee (Endorsement Required)	175	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 442	

Recipient's Name (Please Print Clearly for Mail Carrier)
U.S. TRUST CO.
 Street, Apt. No., or P.O. Box No.
114 West 47th St.
 City, State, ZIP+4
NY NY 10036

21 October 2002

U. S. Trust Company NA
 114 West 47th Street
 New York, New York 10036

Attn: Alan L. Miller

Re; Memorial Drive Trust, MDT Retirement Plan

Dear Mr. Miller:

I have a bit of a problem understanding the situation you describe in your letter requesting that I send \$18,434.32 to you because of an "excess distribution".

Please provide me with additional details and certified financial statements so I can understand the situation and your request. I would like copies of the plan documents and any amendments that were in force as of 31 December 2000, 30 June 2001, and 31 December 2001. Also please send certified financial statements as to the plan values and the values of my accounts as of the above dates.

I have a statement for 31 December 2000 that shows a balance of \$511,070.84 – with \$486,827.11 in BGF 2. On 4 June 2001, I requested that \$400,000 be rolled over to my IRA. I was informed that the "80%" rule would only allow an amount less than \$400,000 to be rolled over to my IRA. My IRA account shows the receipt a roll over deposit of \$338,739.37. Dividing \$338,739.37 by .8 (80%) equals \$423,424. Thus, the balance in BGF2 after the roll over should have been more than \$84,000. This balance less a \$25,000 30 June 2001 distribution, and the reduction due to performance of BGF2 should have allowed for a distribution as of 31 December 2001.

I look forward to receiving the information requested above. Please send it to me at the above address.

Thank you for your attention to this matter.

Sincerely,

COPY



Karl P. Fagans
104 Connecticut Drive
Chocowinity, NC 27817

Tel: 252.940.4608
e-mail: karl@fagans.net

25 November 2002

U. S. Trust Company NA
114 West 47th Street
New York, New York 10036

Attn: Alan L. Miller

Re; Memorial Drive Trust, MDT Retirement Plan

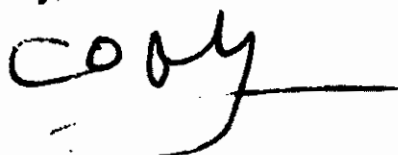
Dear Mr. Miller:

I still await a response to my letter of 21 October 2002. To date I have received an e-mail from Jennifer Sparrow @ acorn-park.com that purports to show the balances and deductions from my account and a statement showing the Balance as of June 30, 2001.

Please reply with the information requested in my letter of 21 October 2002, so we can resolve the matter expeditiously.

Thank you.

Sincerely,



PALMER & DODGE LLP

111 HUNTINGTON AVENUE AT PRUDENTIAL CENTER
BOSTON, MA 02199-7613

MALCOLM R. HINDIN
DIRECT DIAL: 617.239.0257
DIRECT FAX: 617.316.8343
mhindin@palmerdodge.com

(4)

May 3, 2004

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Karl Fagans
104 Connecticut Drive
Chocowinity, NC 27817

Re: Arthur D. Little, Inc. Employees' MDT Retirement Plan

Dear Mr. Fagans:

This law firm represents U.S. Trust Company, N.A. ("U.S. Trust"), in its capacities as Trustee and Plan Administrator of the Arthur D. Little, Inc. Employees' MDT Retirement Plan (the "Plan"). U.S. Trust has referred to us the matter involving the Plan's inadvertent overpayment to you of Plan funds in 2002.

As U.S. Trust informed you in previous correspondence, copies of which are enclosed, the January 2002 distribution you received from the Plan exceeded the amount to which you were entitled under the terms of the Plan and applicable law. That excess amount is \$18,434.32 (the "overpayment"). As of the date of this letter, you have not returned the overpayment to the Plan, despite U.S. Trust's request that you do so.

Your failure to return the overpayment to the Plan constitutes a willful and wrongful conversion of funds that belong to the Plan. Your failure to return the overpayment continues to impose damages and losses on the Plan and other participants in the Plan. If you do not return the overpayment, the Plan can and will bring a lawsuit against you to recover the overpayment pursuant to legal claims involving the doctrine of unjust enrichment, conversion, and any other legal claims that may apply. Indeed, that is what the Plan has retained us to do, in the event that you do not promptly return the overpayment.

In response to your requests, Jennifer Sparrow, on behalf of U.S. Trust, emailed you a detailed explanation of the calculation of your overpayment on October 31, 2002 (please see enclosed). This explanation clearly shows the manner in which U.S. Trust determined that the Plan made an overpayment to you in the amount of \$18,434.32.

On behalf of the Plan, we again demand that you return the overpayment to the Plan. You should do so by sending a check payable to "Arthur D. Little, Inc. Employees' MDT Retirement Plan" in the amount of \$18,434.32 to: Arthur D. Little, Inc. Employees' MDT Retirement Plan, c/o U.S. Trust

Karl Fagans
May 3, 2004
Page 2

Company, N.A., 114 West 47th Street, New York, New York 10036-1532, Attention: Alan Miller (4th Floor). **This check must be received by the Plan no later than June 7, 2004.**

The Plan has authorized us to commence legal proceedings against you if it does not receive the overpayment from you by June 7, 2004. If you fail to return the overpayment by that time, the Plan will seek to recover from you not only return of the overpayment, but also lost investment return, the Plan's legal fees incurred in prosecuting the suit against you, and such other damages and relief as may be appropriate.

If you or, if you are represented by counsel, your legal counsel would like to discuss this matter with me, please contact me at the address or telephone number given at the top of this letter.

Sincerely,

Malcolm E. Hindin, Esq.

cc: Gloria E. Pollack, Esq.

Karl P. Fagans
104 Connecticut Drive
Chocowinity, NC 27818
252-940-4608

(F)

7 May 2004

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Malcom E. Hindin, Esq.

Palmer & Dodge

111 Huntington Avenue at Prudential Center

Boston, MA 02199-7613

Re; Arthur D. Little, Inc. Employees' Retirement Plan

Dear Mr. Hindin:

Enclosed for you information are copies of letters from my file, which I sent to US Trust in 2002 (attn: Alan L. Miller).

Mr. Miller or U.S. Trust did not respond to these requests.

Please let me know when my requests will be addressed.

Thank you

Sincerely,

Karl P. Fagans

Encl: 2

Karl P. Fagans
104 Connecticut Drive
Chocowinity, NC 27817

Q

30 May 2004

Mr. Malcolm E. Hindin
PALMER & DODGE LLP
111 Huntington Avenue
At Prudential Center
Boston, MA 02199-7613

Re: Arthur D. Little Inc. Employees' MDT Retirement Plan

Dear Mr. Hindin:

I am attaching a listing of the MDT Plan statements I received showing balances from 1 January 2000. Please see the attached worksheet titled "MDT Statements Received by Karl Fagans. This sheet shows a balance of \$0.00 as of 30 June 2002; as well as a positive balance of \$6565.68 as of 31 December 2002. Enclosed are copies of the account statements that contain the data used to construct the worksheet.

Please allow me to address some of the statements you made in your letter of 24 May 2004.

My recollection of our telephone conversation of 13 May 2004 is slightly different than yours. I believe I requested that you address the requests made in my letter of 21 October 2002. As of today, my requests of 21 October 2002 have not been completely addressed. The Plan documents and amendments of the year ending 31 December 2001 was not included in your letter of 24 May 2004. The values you provided in your letter, I don't believe, fill the request I made.

Your letter says that the information I received on my plan statements "did not reflect an actual distribution...." What information can I rely on if not the statements supplied to me by the Plan's administrator?

I cannot find any correspondence or a copy of the plan document that the Plan administrator says it sent to me.

I don't recall a lot about specific procedures or requirements of the plan regarding individual accounts. However, I do recall, that the Plan's Trustee, the Plans Administrator, the Plan's Named Fiduciary, as well as the role of the Deferred Compensation Program Committee changed during the time I was employed, an active member of the Deferred Compensation Program Committee, and/or had an MDT retirement account.

If you need any additional information please let me know. If I do not hear otherwise, prior to 7 June 2004, I assume that manner is resolved and no further action is required.

Sincerely,

COPY

Karl P. Fagans

MDT Statements Received by Karl Fagans

Valuation Date	BGF1	BGF2	CCF	Loan Principal	Total
1-Jan-00	\$0.00	\$662,242.20	\$4,045.45	\$4,969.94	\$671,257.59
30-Jun-00	\$582,917.83	\$0.00	\$4,142.94	\$0.00	\$587,060.77
31-Dec-00		\$486,827.11	\$4,243.73	\$20,000.00	\$511,070.84
30-Jun-01		\$389,906.42	\$4,362.58		\$394,269.00
31-Dec-01		\$6,565.68	\$0.00		\$6,565.68
30-Jun-02		\$0.00			\$0.00